

WESLEY WARNOCK  
W. G. SMITH, JR.

IBLA 74-276

Decided October 21, 1974

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas simultaneous lease offer NM 20061.

Affirmed.

1. Administrative Procedure: Generally--Notice: Generally--Notice:  
Constructive Notice--Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

2. Administrative Practice--Oil and Gas Leases: Applications:  
Generally--Oil and Gas Leases: Applications: Sole Party in Interest

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest and the statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

APPEARANCES: George H. Hunker, Jr., of Hunker, Fedric & Higginbotham, P. A., Roswell, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Wesley Warnock and W. G. Smith, Jr., appeal from a decision of the New Mexico State Office, Bureau of Land Management, dated March 25, 1974, rejecting their noncompetitive oil and gas lease offer NM 20061 for the reason that there was not timely compliance with the requirements of regulation 43 CFR 3102.7.

On November 27, 1973, appellant Warnock filed a simultaneous oil and gas drawing entry card for Parcel No. 97 in the December 1973 list of lands offered for lease by the New Mexico Office under the simultaneous filing procedure. On the front of that section of the card headed "Noncompetitive Offer to Lease for Oil and Gas," Warnock's signature and address are entered beneath a printed statement certifying that the applicant is qualified to receive a lease and has complied with the conditions applicable to a lease offer. Included in such statement is a stipulation that "applicant is the sole party in interest in this offer and the lease if issued, or if not the sole party in interest, that the names and addresses of all other interested parties are set forth on the reverse hereof." On the reverse side, under the heading "Other Parties in Interest," appears the typewritten name of appellant Smith, together with his address, Social Security number and the figure "1/2." At the bottom of the reverse side the following notice is conspicuously printed: "NOTE: Compliance must be made with the provisions of 43 CFR 3102." A subdivision of that subpart, in addition to requiring a statement by the offeror such as that printed on the entry card, provides:

If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. \* \* \*

43 CFR 3102.7

On December 18, 1973, 21 days after the filing of the lease offer, appellant Smith, as an owner of a one-half interest in the offer, filed a statement signed only by himself outlining his qualifications to hold a lease. No mention was made of any agreement, oral or written, between the parties.

The State Office, on January 7, 1974, mailed to appellants a "Notice of Rental Due" on the lease in the amount of \$ 320.00. Appellants' remittance was filed January 18, 1974.

Appellants contend that (1) the directive prescribing compliance with Subpart 3102, as it appears in the regulations governing simultaneous filing of lease offers 1/ as well as on the drawing card, is ambiguous in that it fails to furnish adequate notice to all parties in interest of the applicability of the precise requirements contained in 43 CFR 3102.7; (2) even if Smith be rejected as a holder of the lease because of the failure to file a separate statement of interest within the 15-day period, Warnock remains qualified and the lease should be issued to him as the sole party in interest; 2/ (3) Smith's interest in the lease "did not mature until the offer had actually been drawn and afforded the first priority. Until it had been determined that the Warnock-Smith offer had a priority, it was not necessary for Smith to make a showing as to his qualifications and citizenship \* \* \*"; and (4) by demanding the lease payment after receipt of Smith's statement of interest the State Office had in effect approved the statement and waived compliance with the 15-day rule.

[1] We find appellants' arguments to be without merit. Appellants were provided adequate notice of the necessity for complying with the pertinent requirement and the time period in which the statement must be filed. The references to Subpart 3102 elsewhere in the regulations and on the drawing card are in nowise ambiguous or misleading; they direct the attention of the lease applicant to the fact that all of the parties to a simultaneous lease

---

1/ Section 3112.3-1 of 43 CFR Subpart 3112, Simultaneous Offers, states in full: "Compliance with subpart 3102 is required."

2/ On May 23, 1974, appellants forwarded to the State Office for its approval a document signed by Warnock as sole party in interest purporting to assign to Smith an undivided one-half interest in the lease, if issued.

offer must comply with each of the requirements of that portion of the regulations which governs the qualifications of a lessee. It is the duty of the lease applicant, not of the State Office, to make sure that that information is passed on to those whose names are listed on the drawing card as additional parties in interest. In any event, all persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1970); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947); James V. Orbe, 16 IBLA 363, 364 (1974); Ross I. Gallen, 15 IBLA 86, 87 (1974). The regulation applicable here is a duly promulgated regulation.

The fact that Warnock was a qualified applicant did not authorize the issuance of a lease to him as the sole party in interest. The listing of Smith's name on the reverse of the drawing entry card was prima facie evidence that there was an additional party in interest in the offer, as contemplated by 43 CFR 3102.7. D. O. Keon, 17 IBLA 81, 83 (1974). The offer thus fell within the ambit of the requirements of that regulation which pertain to offers and leases involving more than one party in interest, including the provision prescribing the cancellation of any lease issued pursuant to an offer in connection with which the parties have failed to file a separate statement within the time allowed. A lease issued to Warnock as sole party in interest would therefore be invalid as in derogation of the regulation, and subject to immediate cancellation.

Appellants' contention, that because Smith's interest had not "matured" at the time of filing of the offer no statement was required of him then or at any time until the offer had been drawn, is likewise untenable. The purpose of Subpart 3102 is to insure that all prospective oil and gas lessees are qualified, and that their qualifications have been made a matter of record, before their interests have become vested through issuance of a lease. The interest in the offer contemplated by 43 CFR 3102.7 is clearly that which exists at the time of filing. A separate statement of interest is a necessary concomitant to any offer involving more than one party, and it is but logical and in conformity with the intent of the regulations that the period for submission of the statement should commence to run with the filing of the offer. To wait until an offer has been granted first priority before requiring the statement would invite inordinate delay in the administration of the leasing program.

The demand for payment of rental by the State Office did not imply acceptance of Smith's statement or waiver of compliance with any of the requirements of 43 CFR 3102.7. The regulation governing rental payments under the simultaneous leasing program (43 CFR 3112.4-1) provides that "[a] lease will be issued to the first drawee qualified to receive a lease upon payment of the first year's rental \* \* \*". (Emphasis added.) The Notice of Rental Due issued to appellants referred to that regulation and informed appellants that their entry had drawn first priority in the drawing of offers for Parcel No. 97; it did not constitute a binding and final determination that by virtue of that fact they were qualified to receive a lease.

[2] Smith's statement of interest was defective not only as not having been timely filed, but also because it was not signed by Warnock and contained no details of the agreement between the parties. The requirements of 43 CFR 3102.7 are mandatory. An offer not in compliance with this regulation must be rejected. D. O. Keon, supra; Ross I. Gallen, supra; W. D. Girand, 13 IBLA 112, 113 (1973); Richard Hubbard, 2 IBLA 270, 272-73, 78 I.D. 170, 172 (1971).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Joan B. Thompson  
Administrative Judge

We concur:

---

Anne Poindexter Lewis  
Administrative Judge

---

Martin Ritvo  
Administrative Judge

